IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.3755 OF 2003

IN
SUIT NO.2206 OF 1996

Smt. Zaverben W/o. Vithaldas Vishram Thakkar & Ors. ....Plaintiffs

V/s.

Pravin Ramji Thakkar & Ors. ....Defendants

None for the Plaintiffs.

Mr.P.C. Kansara, Advocate, for Defendant No.1 (original Defendant No.2).

Mr.V.M. Vaghela, Advocate, for Defendant No.2 (original Defendant No.3).

CORAM: S.J.VAZIFDAR, J.
DATED: 13TH SEPTEMBER, 2006.

P.C. :-

. By an order dated 14th August, 2006 reliefs in terms of prayers (a) and (b) of the Notice of Motion were granted. The Receiver, therefore, stands appointed in respect of the property in place of Defendant No.1 who was earlier appointed as the Receiver.

2. The suit against Defendant No.1, as recorded in the said order dated 14th August, 2006 has been dismissed.

3. The Notice of Motion was listed for further reliefs by the said order dated 14th August, 2006. This apparently was because the present Defendant No.1 was not present.

4. The present Defendant No.1 is present today through his advocate. He admits that he took possession of Room No.3 described in prayer (c) of the Notice of Motion during his appointment as the Court Receiver. Thus, it is only in his capacity as Court Receiver that he took possession of the said property. Indeed if he had taken possession in any other capacity, it would have been ex-facie in contempt of the orders of this Court as it would have amounted to interference of the Court Receiver.

5. It is submitted that the original Defendant No.1 ought to be permitted to continue to occupy the said premises as a 'Trustee' on behalf of the true owners. There is no warrant for such an application being granted. The property is in custodia legis and the Receiver of this Court is now appointed. This property, therefore, must be handed over to the Court Receiver.

6. In the circumstances the Notice of Motion is made absolute in terms of prayer (c).

7. It is further ordered that the Court Receiver, High Court, Bombay, shall investigate the matter and in the event of it being ascertained that Defendant No.2 has also taken possession of any property during the appointment of the Court Receiver, he shall take suitable action against Defendant No.2 as well.

8. The Receiver shall, if necessary, seek information from original Defendant No.1 in this regard. Original Defendant No.1 is at liberty to supply information to the Court Receiver.

9. This Notice of Motion is accordingly disposed of with liberty to the parties to adopt appropriate proceedings for recovery of any losses or dues that may have been occasioned on account of their acts including those which are the subject matter of the present Notice of Motion.

10. The Notice of Motion is accordingly disposed of.